

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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AARON PETERSON,

Plaintiff,

9:22-cv-212 (BKS/CFH)

v.

J. CROWE, WILLIAM DUNDON,  
BRUCE MITCHELL, and FERGUSON,

Defendants.

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**Appearances:**

*Plaintiff pro se*  
Aaron Peterson  
Rochester, NY 14609

**Hon. Brenda K. Sannes, Chief United States District Judge:**

**DECISION AND ORDER**

Plaintiff Aaron Peterson commenced this proceeding under 42 U.S.C. § 1983, and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 2). On March 8, 2023, Defendants filed a motion under Federal Rule of Civil Procedure 41(b) to dismiss Plaintiff’s complaint for failure to prosecute. (Dkt. No. 48). Plaintiff’s response due date was April 5, 2023, (*id.*); no response was filed. However, on April 10, 2023, Plaintiff called the Court and informed a Court clerk that he had been released from custody in December 2022 and provided an updated address. A copy of the docket report was mailed to Plaintiff at his new address. Plaintiff failed to respond to the motion to dismiss.

Defendants’ motion to dismiss was referred to United States Magistrate Judge Christian F. Hummel who, on May 9, 2023, issued a Report-Recommendation, recommending that it be granted and that Plaintiff’s complaint be dismissed without prejudice. (Dkt. No. 53). The parties

were informed that they had fourteen days within which to file written objections to the report under 28 U.S.C. § 636(b)(1), and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 10). Because the docket had not been updated to reflect Plaintiff's current address, the Report-Recommendation was sent to Cossackie Correctional Facility, where Plaintiff had resided prior to his release. (*Id.*). The Report-Recommendation was returned to the Court marked "Returned to Sender, Refused, Released 12/21/22." (Dkt. No. 54). As the Report-Recommendation had been sent to the incorrect address, on May 30, 2023, the Court issued a Text Order directing the Clerk to mail the Report-Recommendation to Plaintiff at his new address, and extended the deadline for filing objections to June 13, 2023. (Dkt. No. 55). No objections have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. In recommending that the complaint be dismissed for failure to prosecute, Magistrate Judge Hummel carefully recounted the history of this case and the duration of Plaintiff's failure to prosecute this action, noting that prior to the April 10, 2023 telephone call, Plaintiff had not been in contact with the Court since October 3, 2022. (Dkt. No. 53, at 5–6 (citing Dkt. No. 34)). The Court notes that Plaintiff has not been in contact with the Court since his April 10, 2023 telephone call. Therefore, having reviewed the Report-Recommendation for clear error and found none, the Court adopts it in its entirety.

For these reasons, it is


**ORDERED** that the Report-Recommendation (Dkt. No. 53) is **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' Motion to Dismiss (Dkt. No. 48) pursuant to Fed. R. Civ. P. 41(b) is **GRANTED**, and Plaintiff's complaint (Dkt. No. 1) is **DISMISSED without prejudice**; and it is further

**ORDERED** that the Clerk of the Court serve a copy of this Decision and Order on the Plaintiff via certified mail.

**IT IS SO ORDERED.**

Dated: June 26, 2023

  
Brenda K. Sannes  
Chief U.S. District Judge